IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.MC.No. 3472 of 2007()

CMP.2909/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

.....

PETITIONER/COMPLAINANT:

MAHINDRA AND MAHINDRA FINANCIAL
SERVICES LIMITED, REPRESENTED BY ITS
POWER OF ATTORNEY HOLDER, TONEY GEORGE,
VAZHAPPALLI VEEDU, NHARAKKAL MURI,
ERNAKULAM.

BY ADV. SRI.DEVAPRASANTH.P.J.

RESPONDENTS/CRL.PETITIONER:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
CHERTHALA, REPRESENTED BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3472 of 2007

Dated this the 29th day of November 2007

O R D E R

The petitioner is a financier. The petitioner had advanced amounts to the registered owner of a vehicle on the security of the vehicle. The registered owner allegedly had forged documents to make it appear that the loan has been closed. Vehicle was allegedly transferred to another person after so forging the documents. On the complaint of the petitioner, a crime was registered and the vehicle was seized. Interim custody of the vehicle has been given to the petitioner by an order passed by the learned Magistrate. The petitioner is now keeping custody of the vehicle. According to the petitioner, continued retention of the vehicle will work out loss and hardship to all concerned. Huge amount is liable to be repaid. If permission is granted to the petitioner, he shall sell the vehicle and the loan liability can be discharged or reduced to that extent. He filed an application to that effect. The learned Magistrate, on the sole ground that the final report has not been filed, rejected the said application. The petitioner claims to be aggrieved by the said order.

2. To me, the grievance of the petitioner appears to be justified. The mere fact that final report has not been filed does not divest the learned Magistrate of his jurisdiction to pass an appropriate order on merits. But, however, I do note that neither the accused, nor the person from whom the vehicle has been seized have been made party to the proceedings by the petitioner. I am satisfied that this Criminal Miscellaneous Case can be allowed subject to appropriate observations.

In the result,

1. This Criminal Miscellaneous Case is allowed.

2. There shall be a direction that the petitioner shall be at liberty to file a fresh application for identical relief before the learned Magistrate after arraying all necessary parties.

3. The learned Magistrate must consider such application afresh on merits and the mere fact that the final report has not been filed should not be reckoned by the learned Magistrate as satisfactory ground not to consider the prayer of the petitioner.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007